IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 182 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARSEL DISTRIBUTORS SHAHIBAUG LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR RK PATEL for Petitioner

MR B B Naik with Mr RP BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

At the instance of the assessee for his case for the assessment year 1980-81, the following two questions of law have been referred:

"(i) Whether on the facts and in the circumstances of the case,the tribunal was justified in law in disallowing the gratuity liability of Rs. 54,644/- claimed by the assessee u/s 28 and/or section 37 of the I.T.. Act, 1961?

(ii) Whether on the facts and in the circumstances of the case,the tribunal was justified in law in holding that the lower authorities were justified in disallowing sum of Rs. 132,46,737/- incurred by the assessee as dealers aid u/s 37 (3A) of the I T Act, 1961?"

Learned counsel for the assessee invited our attention to the judgment of Division Bench of this court in the case of Innosearch Limited vs. CIT (ITR No.292 of 1984 decided on 29.4.1999). On question No.1, the Division Bench of this court in Innosearch (supra) placed reliance on the decision of the Supreme court in the case of Shree Sajjan Mills vs,. CIT (1985) 156 ITR 585. Considering the claim of the assessee for allowance of gratuity liability under section 28 and/or section 37 of the Act, the Division Bench held that such gratuity liability can be allowed only on fulfilment of the conditions specified in clause (b) of section 40A (7) of the Act. It is not disputed on behalf of the assessee that gratuity liability was not discharged in accordance with the conditions laid down in section 40A (7)(b). Question No.1 ,therefore,has to be answered against the assessee by holding that the tribunal was justified in disallowing gratuity liability of Rs. 54,644/- claimed by the assessee under section 28 and/or section 37 of the Act because the conditions specified in section 40A (7) (b) were not fulfilled.

The second question is also squarely covered by the decision of the Division Bench in Innosearch Limited (supra). Allowance in the sum of Rs. 13,46,737/ claimed by the assessee under section 37 (3A) of the Act was disallowed on the ground that it was an expenditure incurred for advertisement , publicity and sales promotion. Similar allowance claimed in the case of Innosearch Limited (supra) was disallowed on the ground that it was incurred for advertisement and publicity for sales promotion. Relying on the decision of the Division

bench in Innosearch Limited (supra),question No.2 is also answered against the assessee and in favour of the revenue.

Reference thus stands disposed of in the manner indicated above. There shall, however,be no order as to costs.

(D. M. Dharmadhikari, C.J.)

(M.S.Shah, J.)

parekh